

3
No. 89-1538

Supreme Court, U.S.

FILED

MAY 21 1990

JOSEPH E. SPANIOLO, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1989

RANDALL HANK WILLIAMS,

Petitioner,

v.

CATHERINE YVONNE STONE,

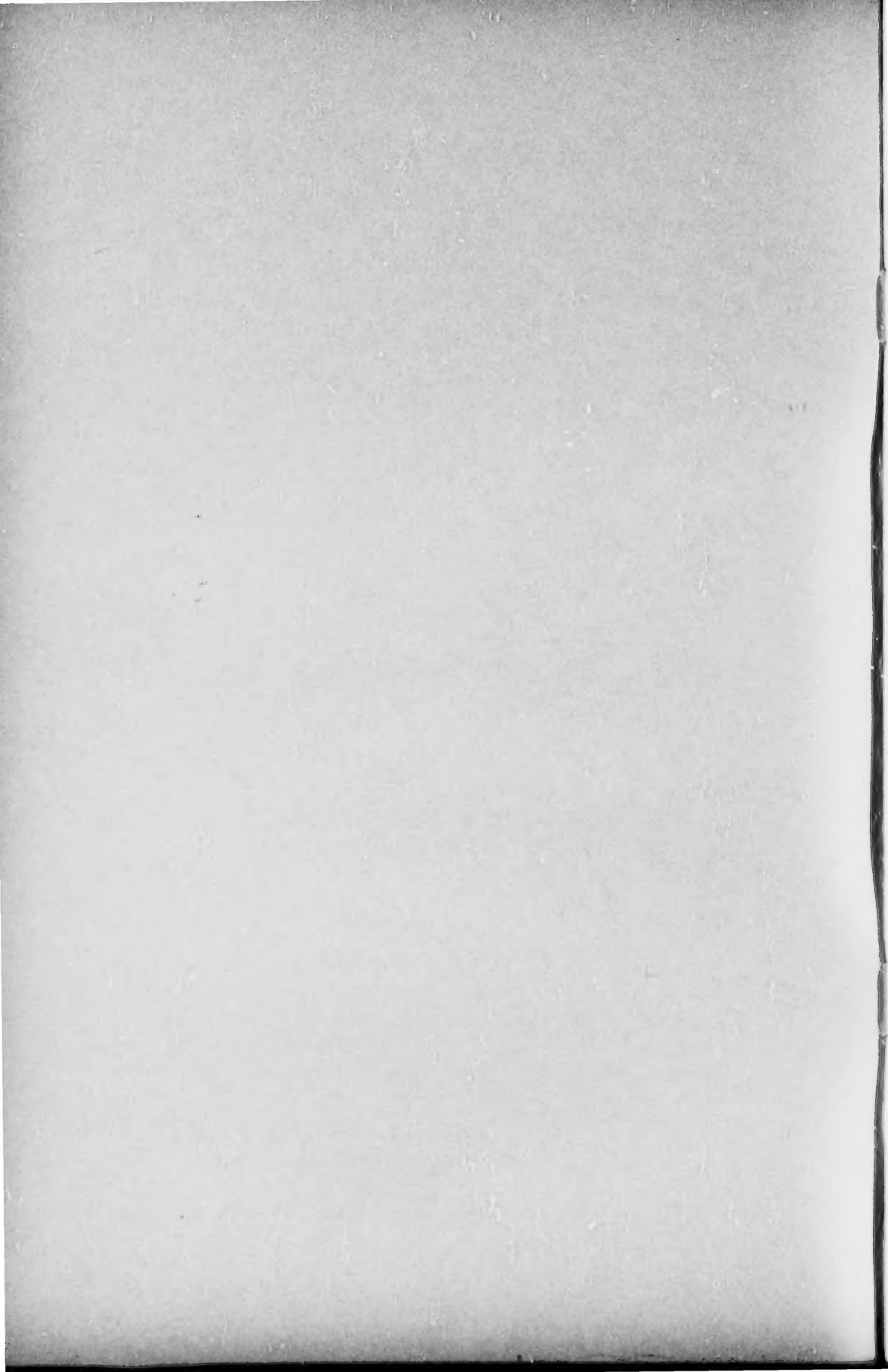
Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

DAVID CROMWELL JOHNSON
Counsel of Record
JOHNSON AND CORY, P.C.
300 21st Street North
Birmingham, Alabama 35203
205-328-1414

Attorney for Respondent



I. QUESTIONS PRESENTED

1. SHOULD THIS COURT REVIEW
SUBSTANTIVE ISSUES AND FINDINGS OF FACT
AND LAW BY THE ALABAMA SUPREME COURT,
UPON THE PETITION OF A NON-PARTY TO
THOSE PROCEEDINGS, WHO FAILED TO FILE A
TIMELY MOTION TO INTERVENE AFTER NOTICE
OF THE PROCEEDINGS AND THE ISSUES
RAISED?

2. SHOULD THIS COURT REVIEW A CLAIM OF
DUE PROCESS VIOLATION WHEN PETITIONER
HAS FAILED TO RAISE THE CLAIM AT THE
EARLIEST OPPORTUNITY IN THE STATE
COURT, AFTER ACTUAL NOTICE OF THE
PROCEEDINGS AFFECTING HIS RIGHTS?

3. SHOULD THIS COURT REVIEW THE
ALABAMA SUPREME COURT'S DECISION IN
LIGHT OF TRIMBLE, LALLI AND REED V.
CAMPBELL WHEN THE ALABAMA DECISION IS
NOT IN CONFLICT WITH THESE DECISIONS?

II. TABLE OF CONTENTS

	Page
I. QUESTIONS PRESENTED.....	i
II. TABLE OF CONTENTS.....	ii-iii
III. TABLE OF AUTHORITIES.....	iv-v
IV. STATEMENT OF THE CASE.....	1
V. REASONS FOR DENYING THE WRIT...	8
A. THIS COURT SHOULD NOT REVIEW SUBSTANTIVE ISSUES AND FINDINGS OF FACT AND LAW BY THE ALABAMA SUPREME COURT UPON THE PETITION OF A NON-PARTY TO THOSE PROCEEDINGS, WHO FAILED TO FILE A TIMELY MOTION TO INTERVENE AFTER NOTICE OF THE PROCEEDINGS AND ISSUES RAISED.....	8
B. THIS COURT SHOULD NOT REVIEW A CLAIM OF DUE PROCESS VIOLATION WHEN PETITIONER HAS FAILED TO RAISE THE CLAIM AT THE EARLIEST OPPORTUNITY IN THE STATE COURT AFTER ACTUAL NOTICE OF THE COMPLAINT AFFECTING HIS RIGHTS.....	14

- C. THIS COURT SHOULD NOT
REVIEW THE ALABAMA SUPREME
COURT'S DECISION IN LIGHT
OF TRIMBLE, LALLI , AND
REED V. CAMPBELL BECAUSE
THE ALABAMA DECISION IS
NOT IN CONFLICT WITH THESE
DECISIONS.....13

VI. CONCLUSION.....22

Notice of Appeal.....Resp. App. A-1.1
Security For Costs.....Resp. App. A-1.2
Designation of Record..Resp. App. A-1.3
Certificate of Filing..Resp. App. A-1.4

III. TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<u>Ex Parte Jefferson Cablevision Corporation</u> , 281 Ala. 657, 207 So.2d 132 (1968).....	11
<u>Lalli v. Lalli</u> , 439 U.S. 259 (1978).....	18,20
<u>Mullane v. Central Hanover Bank & Trust Co.</u> , 339 U.S. 306, 314 (1950).....	14
<u>National Association for the Advancement of Colored People v. New York</u> , 413 U.S. 345, 365 (1973).....	9
<u>Pruett v. Ralston Purina Company</u> , 273 Ala. 594, 143 So.2d 309 (1962).....	11
<u>Pruitt v. Marshall County Department of Pensions</u> , 494 So.2d 439, 442 (Ala. Civ. App. 1986).....	11
<u>Randolph County v. Thompson</u> , 502 So.2d 357, 365 (Ala. 1987).....	11
<u>Reed v. Campbell</u> , 476 U.S. 852 (1986).....	19,20

Trimble v. Gordon, 430 U.S. 762
(1977).....18,19,20

Tulsa Professional Collection
Services, Inc. v. Pope, 485
U.S. 478 (1988).....15



IV. STATEMENT OF THE CASE

Statement of the Proceedings

Petitioner has always had actual knowledge that Respondent was attempting to reopen the Estate of Hiram Hank Williams (hereinafter referred to as "Williams Sr.") and was seeking her pro rata child's share of the Estate. The easiest and clearest way to show this to the Court is to review the filings in this case, and examine the certificates of service on each filing. In fact, examination of the pleadings reveals that from the very beginning Petitioner anticipated that Respondent would seek the relief she was ultimately awarded, and initiated the entire action by seeking a declaration to uphold the Decrees entered in the Estate of Williams Sr.

The action now before this Court was initiated on September 10, 1985, by Randall Hank Williams (hereinafter referred to as "Williams Jr.") and Wesley Rose and Fred Acuff as trustees in liquidation for the stockholders of Fred Rose Music Inc. and Milene Music, Inc., which corporations had acquired rights in the musical compositions of Williams Sr. The original complaint was amended on November 25, 1985 (App. F-1) and sought the following determinations:

- 1) Catherine Yvonne Stone (hereinafter referred to as "Stone") has never been adjudicated to be the child of Williams Sr.;
- 2) Stone is an adopted child and is therefore barred by §26-17-6(e) of the Code of Alabama (1984) from

establishing paternity to Williams Sr.;

3) Stone is barred by statute of limitations, laches, waiver and estoppel from establishing paternity to Williams Sr. in 1985;

4) Court orders entered in the Matter of the Estate of Hiram Hank Williams (Williams Sr.), Circuit Court of Montgomery County, Alabama, In Equity, Case No. 25,056 and the Matter of the Guardianship Estate of Randall Hank Williams, a minor, Circuit Court of Montgomery County, Alabama, in Equity, Case No. 27,960, are binding on Stone and bar her from establishing paternity in 1985;

5) Williams Jr. is the sole child of Williams Sr., and consequently,

the sole heir of Williams Sr.

Stone filed a counterclaim to the Williams Jr. declaratory judgment action. (App. F-2) She sought a judgment of paternity that she is a child of Williams Sr. and is due her proportionate interest in the proceeds of the estate of Williams Sr. She requested Williams Jr. to account for all monies he received from the Williams Sr. estate and requested the Court to impose a constructive trust on Williams Jr. for all monies received. A copy of this counterclaim was served upon counsel for Williams Jr.

On October 24, 1986, Stone filed a Third Party Complaint (App. F-3) against Irene Smith (the administratrix of the estate of Williams Sr. from 1955 to 1969), the Estate of Robert B.

Stewart (Robert Stewart having served as the attorney for the estate from 1953 until it was closed in 1975 and as the administrator of the estate from 1969 to 1975), Jones, Murray and Stewart (the law partnership of which Robert Stewart was a member), Gulf American Fire & Casualty Company (the insurance company which bonded the administrators of the estate), American States Insurance Company (successor in interest of Gulf American Fire & Casualty Company). As relief, Stone specifically demanded "that the estate of Williams Sr. be reopened and all orders purportedly governing Stone's rights in that estate be declared null and void [and] that Stone be entitled to share her proportionate interest in all property and income of the estate." (App. F-3.16) A copy of the Third

Party Complaint was served upon counsel for Williams Jr. (App. F-3.18)

On November 17, 1986, Williams Jr. filed a Motion for Summary Judgment on the Amended Complaint and the Counterclaim. (App. F-4)

Honorable H. Mark Kennedy, Circuit Court of Montgomery County, Alabama, granted a Partial Summary Judgment for Williams Jr. on July 14, 1987. (App. B-1) In that Order, Judge Kennedy outlined the issues before him on summary judgment motion, and included:

"Whether, consistent with prior orders and judgments of this Court, Williams, Jr. is the sole heir of the Williams, Sr. estate and as such has exclusive rights to all proceeds generated in the past by the estate and in the future from copyrighted materials." (App. B-1.16)

The July 14, 1987 Order granted summary judgment for all defendants on all issues except the issue of whether

Stone is a child of Williams Sr. That issue was tried on September 2, 1987.

(App. B-2)

Stone filed a Notice of Appeal from the July 14, 1987 Order granting summary judgment on the Third Party Complaint. A copy of the Notice of Appeal was served on counsel for Williams Jr. (Respondent's App. A-1.4)

On appeal, copies of all briefs were served upon counsel for Williams Jr. (App. G-2.35, 3.24, 4.17, 5.29, 6.13) On appeal, Stone continued to argue that a cause of action for fraud was stated and that she was entitled to a trial on her claims. Third party defendants conceded no argument, and continued to assert their defense that there was no fraud and no cause of action for fraud or any other mechanism to reopen the estate.

On July 5, 1989 the Supreme Court of Alabama issued its opinion. On July 19, 1989 Williams Jr. filed his Petition for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and For Stay of Issuance of Certificate of Judgment Pending Further Proceedings. (App. G-7) The Petition was considered and denied on November 9, 1989 by the Supreme Court of Alabama. (App. C-1)

V. REASONS FOR DENYING THE WRIT

A. THIS COURT SHOULD NOT REVIEW SUBSTANTIVE ISSUES AND FINDINGS OF FACT AND LAW BY THE ALABAMA SUPREME COURT UPON THE PETITION OF A NON-PARTY TO THOSE PROCEEDINGS, WHO FAILED TO FILE A TIMELY MOTION TO INTERVENE AFTER NOTICE OF THE PROCEEDINGS AND ISSUES RAISED.

The only issue which this Court can review at the request of Williams Jr. is whether the Alabama Supreme

Court abused its discretion when it denied his Petition for Leave to Appear for Purpose of Seeking to Vacate and Modify Opinion of July 5, 1989 and for Stay of Issuance of Certificate of Judgment Pending Further Proceedings; and the Court's first inquiry should be directed to the timeliness of the application. National Association for the Advancement of Colored People v. New York, 413 U.S. 345, 365 (1973) (this is true whether the intervention claimed is of right or as permissive).

Alabama Rule of Civil Procedure 24 governs intervention in civil actions. It is substantially identical to Federal Rule of Civil Procedure 24, and states:

(a) Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to

intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Stone refers to Williams Jr.'s Petition as a Petition to Intervene under Alabama Rule of Civil Procedure 24, although it is not clear that he was even asking to intervene. The Petition simply asks for permission to appear. If this is all he seeks, then he is not entitled to any review at all in this Court.

The Alabama courts have always

examined the amount of time between when the intervenor first became aware of the action and the filing of the application to intervene. Pruitt v. Marshall County Department of Pensions, 494 So.2d 439, 442 (Ala. Civ. App. 1986); Ex Parte Jefferson Cablevision Corporation, 281 Ala. 657, 207 So.2d 132 (1968); Pruett v. Ralston Purina Company, 273 Ala. 594, 143 So.2d 309 (1962). When the intervenor sits on his right to intervene and waits until he sees what the results are or until he sees that the result may be adverse to him, the Alabama courts have not tolerated intervention at the expense of prejudice to the other litigants.

In Randolph County v. Thompson, 502 So.2d 357, 365 (Ala. 1987), the Supreme Court of Alabama stated that when an intervenor does not file his

application until after judgment is entered, the courts should consider whether intervention prejudices the rights of the existing parties to the litigation and whether it substantially interferes with the orderly processes of the court.

Williams Jr. had notice of the Third Party Complaint from the day it was filed. The Complaint clearly seeks the reopening of the Estate of Williams Sr. and redistribution of the proceeds. (App. F-3.16) He was present at the arguments on the Motions for Summary Judgment. Although he was not a party to the appeal, he was served with a copy of the Notice of Appeal, and he was given copies of the briefs. He chose not to be a party to the complaint which had been pending for two years, until he received a copy of

the appellate decision. The arguments he makes to this Court could have been made at any time during those two years on an application to intervene as a matter of right.

Now, Stone's rights given her under the Alabama judgment are prejudiced by Williams Jr.'s petition to this Court from a judgment to which he was not a party. She had a right to rely on the judgment because Williams Jr. had consciously chosen not to become a party to the proceeding, and she should not have expected that he would attempt to exercise a right which he did not have by filing this Petition. She now must wait resolution of this Petition to enforce her judgment.

B. THIS COURT SHOULD NOT REVIEW A CLAIM OF DUE PROCESS VIOLATION WHEN PETITIONER HAS FAILED TO RAISE THE CLAIM AT THE EARLIEST OPPORTUNITY IN THE STATE COURT AFTER ACTUAL NOTICE OF THE COMPLAINT AFFECTING HIS RIGHTS.

The claim of due process violation by Williams Jr. could have been used as a grounds for intervention in the Third Party Complaint as early as October 24, 1986, the date of service of the complaint upon his counsel. (App. F-3.18) He was aware at that time that Stone was seeking the reopening of the estate and her proportionate share of the estate proceeds. (App. F-3.16) He was also aware on that date that he was not a named party to the action.

Williams Jr. in his Petition to this Court (Petition, p. 19-20) argues that the cornerstones of due process are notice and an opportunity to be heard. Mullane v. Central Hanover Bank

& Trust Co., 339 U.S. 306, 314 (1950)
and Tulsa Professional Collection
Services, Inc. v. Pope, 485 U.S. 478
(1988). Quick analysis of these
proceedings reveals that Williams Jr.
has received all the process he is due.

He received a copy of the Third
Party Complaint. If he read the
complaint he would have found that
Stone was seeking to reopen the estate
and obtain her pro rate share of it,
which necessarily would affect his
share of the estate by half. Williams
Jr. was provided with a copy of the
notice of appeal, advising him that the
claims raised in the Third Party
Complaint were not closed. He received
copies of all briefs which clearly show
that Stone had not dismissed or
abandoned any of her original claims.

He claims that he had no

opportunity to be heard by the Alabama Supreme Court. However, the record shows that he filed a Petition for Leave to Appear (containing the arguments presented to this Court), which the Alabama Court "carefully" and "closely" considered. (App. C-1.11, 1.12, 1.13) The Alabama Court found that "the position advanced by Williams, Jr., that Stone was not an "heir" was adequately presented by other parties on this appeal." (App. C-1.13) Directly and indirectly, he presented his arguments and had the opportunity to be heard by the Court. His due process rights have not been violated.

Williams Jr. gambled on the Alabama Supreme Court decision, hoping to win either way. If the Court had affirmed the judgment without his

intervention, he was saved the effort of briefing and arguing to the Court. If the Court reversed the judgment, he would have the freedom to make the arguments he now makes because he was not a party to the appeal and he was surprised that his rights have been affected. He has accused Stone of a calculated litigation strategy of filing only an appeal from the summary judgment on the Third Party Complaint, while he now attempts to justify his own litigation device. He has treated his rights rather cavalierly. Williams Jr. now seeks the Court's assistance to regain that which he voluntarily gave up.

C. THIS COURT SHOULD NOT REVIEW THE ALABAMA SUPREME COURT'S DECISION IN LIGHT OF TRIMBLE, LALLI , AND REED V. CAMPBELL BECAUSE THE ALABAMA DECISION IS NOT IN CONFLICT WITH THESE DECISIONS.

The Alabama Supreme Court very accurately described the development of the law with regard to the right of an illegitimate child to inherit through intestate succession. (App. A-1.40 to 1.50) It cited Trimble v. Gordon, 430 U.S. 762 (1977) and Lalli v. Lalli, 439 U.S. 259 (1978), and the resultant changes in Alabama law to make it conform with the constitutional requirements discussed by this Court. The Alabama Court then applied the law of inheritance as it existed in 1989, because

In an action, such as the present one, that is not time-barred and is properly before this Court, we are bound to apply a constitutional law as it exists at

the time the appeal is heard. (App. A-1.51)

The Alabama Supreme Court did not reopen this estate by retroactively applying **Trimble** and **Lalli**. Instead, the Court expressly reopened the estate because of the fraud practiced by the administrators and attorneys. Once the estate was opened it simply applied existing, current and constitutional law.

Williams Jr. contends that this retroactive application of **Trimble** and **Lalli** is illegal and in conflict with decisions from this Court. One of the cases cited by him to support this contention is Reed v. Campbell, 476 U.S. 852 (1986). Stone contends that the Alabama decision is not in conflict

with, but instead, conforms with the Reed decision, which controls this decision.

In Reed the illegitimate's father died before Trimble was decided, but the claim of heirship was made after the Trimble decision. At that time, the estate was still open. This Court could find no reason why "these two facts, either separately or in combination, should have prevented the application of Trimble, and the allowance of appellant's claim." Reed, 476 U.S. at 856.

In the case at bar, Williams Sr. died well before the Trimble decision in 1977. The 1967 and 1968 orders were vacated and the estate was reopened because the Alabama Court found that the administrators and attorneys for

the estate had committed legal fraud on the court in concealing the existence and identity of an heir. Hence, at the time of the July 1989 Alabama decision applying Trimble to determine Stone's status, the estate was open. Under Reed, the Alabama Court was correct to apply Trimble and Lalli, and the Alabama decision of Everage. Although the Alabama Court did not cite Reed, their decision is in conformity with it.

There is no jurisdiction under Supreme Court Rule 17 to consider this issue on certiorari because there is no conflict between the state court decision and important questions of federal law as decided by this Court.

VI. CONCLUSION

This case presents extraordinary facts which may never coincide in history again. The Alabama Court noted "the unique character of the case" and took into consideration "these peculiar circumstances" in fashioning a remedy. (App. C-1.11). The issues presented by Williams Jr. are peculiar to these facts here and a decision based on these facts will provide no guideline to future litigants.

The petition for writ of certiorari should be denied.

Respectfully submitted,

DAVID CROMWELL JOHNSON
Johnson and Cory, P.C.
300 21st Street North
Birmingham, Alabama 35203
205-328-1414

Attorneys for Respondent
Counsel of Record

-Resp. App. A-1.1-

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE,)
)
Third Party Plaintiff,)
)
VS.)
)
GULF AMERICAN FIRE & CASUALTY)
COMPANY; AMERICAN STATES)
INSURANCE COMPANY; JONES,)
MURRAY & STEWART, P.C.; IRENE)
SMITH; THE ESTATE OF ROBERT B.)
STEWART, etc.,)
)
Third Party Defendants.)

NOTICE OF APPEAL

Now comes the Third Party
Plaintiff, Cathy Yvonne Stone, by and
through her undersigned attorney and
appeal to the Supreme Court of Alabama
from an Order of the Circuit Court of
Montgomery County, Alabama dated July
14, 1987, and made final on October 22,
1987, granting Third Party Defendants

Motion For Summary Judgment.

/s/ DAVID CROMWELL JOHNSON
Attorney For Third Party
Plaintiff
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
205-328-1414

CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a copy of the foregoing on all counsel of record by placing same in the U.S. mail, first class postage prepaid, on this the 30th day of November, 1987.

/s/ DAVID CROMWELL JOHNSON

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE,)
)
Third Party Plaintiff,)
)
VS.)
)
GULF AMERICAN FIRE & CASUALTY)
COMPANY; AMERICAN STATES)
INSURANCE COMPANY; JONES,)
MURRAY & STEWART, P.C.; IRENE)
SMITH; THE ESTATE OF ROBERT B.)
STEWART, etc.,)
)
Third Party Defendants.)

SECURITY FOR COSTS

We hereby acknowledge ourselves security for costs of appeal. For the payment of all costs secured by this undertaking, we hereby waive our right to exemption as to personal property under the Constitution and laws of the State of Alabama.

/s/ DAVID CROMWELL JOHNSON
Attorney For Third Party
Plaintiff
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
205-328-1414

/s/ THOMAS W. BOWRON, II
SECURITY

300 N. 21st Street, B'ham, AL
Address

/s/ LEILA HIRAYAMA
SECURITY

300 N. 21st Street, B'ham, AL
Address

Filed and approved this
date: _____

/s/ _____
CIRCUIT CLERK

-Resp. App. A-1.3-

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE,)
)
Third Party Plaintiff,)
)
VS.)
)
)
GULF AMERICAN FIRE & CASUALTY)
COMPANY; AMERICAN STATES)
INSURANCE COMPANY; JONES,)
MURRAY & STEWART, P.C.; IRENE)
SMITH; THE ESTATE OF ROBERT B.)
STEWART, etc.,)
)
Third Party Defendants.)

DESIGNATION OF RECORD ON APPEAL

DESIGNATION OF CLERK'S RECORD:

Appellants respectfully requests
the Clerk to include the record as set
out in Rule 10(b) of the Alabama Rules
of Appellate Procedure, including all
pleadings, orders, motions, discovery,
depositions, exhibits, briefs or other
documents filed with the Clerk's office

in the above styled case.

DESIGNATION OF REPORTER'S TRANSCRIPT:

April 16, 1987, Oral Argument
presented to the Court on Motion
For Summary Judgment

/s/DAVID CROMWELL JOHNSON
Attorney For Third Party
Plaintiff
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
205-328-1414

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA
CASE NO.: CV-85-1316-K

CATHERINE YVONNE STONE,)
)
 Third Party Plaintiff,)
)
 VS.)

GULF AMERICAN FIRE & CASUALTY)
COMPANY; AMERICAN STATES)
INSURANCE COMPANY; JONES,)
MURRAY & STEWART, P.C.; IRENE)
SMITH; THE ESTATE OF ROBERT B.)
STEWART, etc.,)
)
)
Third Party Defendants.)

CERTIFICATE OF FILING

I certify that I have this date filed with the Clerk of this trial court the original and eleven (11) copies of the foregoing Notice of Appeal along with a \$100 docket fee, and such other instruments as have been completed and included herein, for service by the Clerk of a true copy

thereof on each of the following:

1. Robert Esdale, Clerk for the
Supreme Court of Alabama.
2. Maury Smith, Esq.
Sterling Culpepper, Esq.
David Boyd, Esq.
P.O. Box 78
Montgomery, Alabama 36101
3. Robert Black, Esq.
P.O. Box 116
Montgomery, Alabama 36195
4. James F. Hampton, Esq.
567 South Hull Street
Montgomery, Alabama 36104
5. James E. Williams, Esq.
P.O. Box 1267
Montgomery, Alabama 36102
6. Richard H. Frank, Jr., Esq.
1200 One Commerce Place
Nashville, Tennessee 37219
7. Alan L. Shulman, Esq.
136 East 57th Street
New York, New York 10022
8. Stephen Rush, Esq.
Third National Bank Building
17th Floor
Nashville, Tennessee 37219
9. Thomas R. Levy, Esq.
655 Third Avenue
New York, New York 10017
10. Michael Milom, Esq.
Third National Bank Building
13th Floor
Nashville, Tennessee 37219

/s/ DAVID CROMWELL JOHNSON
Attorney For Third Party
Plaintiff
300 North 21st Street
Suite 900, Title Building
Birmingham, Alabama 35203
205-328-1414